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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,333	03/29/2004	Mark Howard Krietzman	ChiWorks Stick 01	5082
7590	10/04/2005		EXAMINER	
Mark Krietzman P.O. Box 3185 Palos Verdes, CA 90274			LEWIN, ALLANA	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/813,333

Applicant(s)

KRIETZMAN, MARK HOWARD

Examiner

Allana Lewin

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8,9,14,16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8,9,14,16 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/29/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group II comprising claims 8-20 and further the resistance species shown in Figure 12, the stick configuration shown in Figures 1A and 1B, and the handle configuration shown in Figure 8A and 8E in the reply filed on September 15<sup>th</sup>, 2005 is acknowledged. Claims 1-7, 10-13, 15 and 17 are withdrawn from consideration as being drawn to non-elected species. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Objections***

2. Claim 20 is objected to because of the following informalities: the word 'movable' appears unnecessarily at the end of line 2 of the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 8, 9, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Jullien (FR Pat. No. 2,564,735).

5. Jullien discloses an exercise device comprising a base, as shown in Figure 1, a guide body connected to the base (see proximate lead line 3) forming a guide path, a stick member (see proximate lead line 1), a pivot connecting the lower portion of the stick member to the guide body (see proximate lead line 2), and resistance means comprising at least 2 hydraulic cylinders affixed opposite one another and each to the lower portion of the stick member and to the base (note Figure 1 and proximate lead line 14). A greater force must be applied to move the stick member around the pivot due to the resistance of the hydraulic cylinders than the force required in the absence of this resistance.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jullien in view of von Othegraven (US Pat. No. 4,517,966).

8. Jullien, discussed in detail above, fails to disclose a movable crossbar attached to the stick member.

9. Von Othegraven teaches an exercise device comprising a pivotal stick member with a movable grasping bar/crossbar attached to the top of the stick member (note Figure 1 and proximate lead line 6) as well as a movable holding piece/sleeve attached to the movable crossbar (see proximate lead lines 7 and 9).

10. Based on the teachings of von Othegraven, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a movable crossbar attached to the top of the stick member of the Jullien device to allow for convenient and comfortable grasping of the apparatus while exercising, as well as to facilitate a greater range of motion while using the device.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571.272.5560. The examiner can normally be reached on Monday-Friday, 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571.272.4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AL  
9/29/2005

  
**Danton D. DeMille**  
**Primary Examiner**